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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 271

JAMES H. QUARLES, *Petitioner*

v.

THE STATE OF TEXAS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI
To the Court of Criminal Appeals for the State of Texas

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To The Honorable The Chief Justice And The Associate Justices Of The Supreme Court Of The United States:

Your Petitioner James H. Quarles, respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court to review the decision of the Court of Criminal Appeals for the State of Texas, rendered December 2, 1964, which upheld the judgment of the County Court at Law of Nueces County, Texas convicting Petitioner of a misdemeanor, to-wit: Barratry.

JURISDICTION

Jurisdiction to review this case upon Writ of Certiorari is conferred upon this Court by 28 U.S.C. 1257 (3). The opinion of the Court of Criminal Appeals for the State of Texas was filed on December 2, 1964. Motion for Rehearing was overruled January 20, 1965 and application for Stay of Mandate was denied by that Court on January 21, 1965.

OPINIONS BELOW

The judgment of the trial court is printed in Appendix "A" hereto, infra, p. 13 and also a copy appears in the record. The opinion of the Court of Criminal Appeals is printed in Appendix "B" hereto, infra, p. 15 and also a copy appears in the record.

QUESTIONS PRESENTED

(1) Whether Article 430 of Vernon's Anotated Penal Code of Texas, hereinafter referred to as the Barratry Statute of the State of Texas, is unconstitutional, in whole or in part, in so much as it deprives Petitioner of: the freedom of speech; the right to freedom of expression; the right to seek employment as an investigator by means of personal solicitation; the right of life, liberty and property without due process of law; the freedom to contract; the freedom to contract for investigative services on a contingent fee basis; as guaranteed to Petitioner by the First, Fifth and Fourteenth Amendments to the Constitution of the United States of America, and by Art. 5207A, Sec. 1, V.A.P.C., the decision of the Court of Civil Appeals in *Quarles v. State Bar of Texas*, 316 S.W.2d 797 and this

Court's opinion in *N.A.A.C.P. v. Button,* 371, U.S. 415, 9 L.Ed.2d 405, 83 S.Ct. 328.* (R. p. ____)

* In it's Opinion in N.A.A.C.P. v. Button, 371 U.S. 415, 9 L.Ed.2d 405, 83 S.Ct. 328, this Honorable Court has held . . . . "the objectionable quality of vagueness and overbreadth in a statute does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application . . . . . Because First Amendment freedoms need breathing space to survive, and the threat of sanctions may deter their exercise almost as potently as actual application of sanctions, government may regulate in the area only with narrow specificity . . . . . A state statute which has so broad and uncertain a meaning that it can be applied to deprive persons of First Amendment rights is unconstitutional whether or not such prosecutions or proceedings would actually be commenced, and whether or not the highest court of the state expressly confirms the right to advocate civil rights litigation . . . . . only a compelling state interest in the regulation of a subject within the state's constitutional power to regulate can justify limiting First Amendment freedoms . . . . a state may not, under the guise of prohibiting professional misconduct, ignore constitutional rights . . . . a state court decree upholding the validity of a state statute may be invalid if it prohibits privileged exercises of First Amendment rights whether or not the record discloses that the party challenging the statute has engaged in privileged conduct, for in appraising a statute's inhibitory effect upon such rights the United States Supreme Court will not hesitate to take into account possible applications of the statute in other factual contexts besides that at bar". . . . and further and more specifically, the Court has held . . . . . "a state statute which makes it a crime (1) to advise another that his legal rights have been infringed and to refer him to a particular attorney or group of attorneys for assistance, or (2) knowingly to render legal assistance to the person thus referred, cannot be justified under the state's interest in regulating the traditionally illegal practices of barratry, maintenance, and champerty, and such a statute limits First Amendment freedoms and violates the Fourteenth Amendment by unduly inhibiting protected freedoms of expression and association . . . . . Malicious intent is of the essence of the common-law offenses of fomenting or stirring up litigation, and as a matter of law the exercise of First Amendment rights for enforcement of constitutional rights through litigation cannot be deemed malicious".